

BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS

Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660

IN THE MATTER OF: \*  
PETITION OF TAIWAN CULTURE CENTER, INC., \*

Petitioner \*

Tai L. Huang \*

For the Petitioner \*

David Brown, Esquire \*

Counsel to the Petitioner \*

\* \* \* \* \*

Barbara Piczak, Department of \*

Permitting Services \*

Martin Klauber, People's Counsel \*

Neither in Support of nor in Opposition \*

To the Petitioner's Position \*

\* \* \* \* \*

Cecelia English \*

Pat Labuda \*

Voicing Community Concerns \*

\* \* \* \* \*

Board of Appeals Case No. S-2668  
(OZAH Referral No. 06-24)

Before: Françoise M. Carrier, Hearing Examiner

**HEARING EXAMINER'S FIRST SUPPLEMENTAL REPORT AND RECOMMENDATION**

## **I. STATEMENT OF THE CASE**

The Board of Appeals (“BOA”) granted Petition S-2668 effective January 9, 2007, permitting the Taiwan Culture Center, Inc. (the “Center”) to operate a service organization under Section 59-G-2.42 of the Zoning Ordinance in an existing structure located at 7509 Needwood Road, Derwood, MD, known as Lot P1, Block B, Derwood Heights Subdivision, Tax Account No. 04-00048193, in the R-200 Zone. The Center also requested and was granted waivers of the side yard requirement for the driveway and the parking area, allowing the organization to maintain the driveway and parking lot in their existing locations. The organization had already been operating at the subject location, without the legal sanction of a special exception, since January 2004.

The subject special exception was granted subject to a total of 19 conditions, which were designed to ensure that the amount and types of activity at the site would remain at the modest levels described at the public hearing. The Petitioner’s representative at the hearing, Tai L. Huang, provided sworn testimony that the Center could and would operate within the limits that he agreed to in order to obtain approval for the special exception. The conditions included limits on the number of events permitted, the number of people who may be on site at one time and the number of cars that may be parked on site at one time. They required the creation of a Community Liaison Council, to meet at least three times per year, as well as an annual report to the BOA. Due to lingering uncertainty as to whether the Center could, in fact, operate within the conditions Mr. Huang agreed to, the conditions of approval also provided for follow-up hearings, to be conducted by the Hearing Examiner during the Fall of 2007 and the Fall of 2008, to assess the Petitioner’s level of compliance with the conditions of the special exception. The Hearing Examiner conducted the first such hearing in December, 2007. As described in this report, the Hearing Examiner finds that the Center has failed to comply with the conditions of the special exception in important respects. Because this conclusion is based on somewhat limited data, the Hearing Examiner recommends a period of close monitoring for six months to provide a better foundation for a decision as to whether the special exception should be revoked.

## **II. BACKGROUND**

### ***A. The Subject Property and Neighborhood***

The subject property consists of approximately 1.5 acres of land located at 7509 Needwood Road in Derwood, at the northeast corner of Needwood Road and Redland Road. It is classified under the R-200 Zone. The property is improved with a small, one-story structure containing approximately 1,098 square feet of space, a small parking area near the front of the building, and a 16-space parking facility in the back yard, at the end of a long, wide driveway. The driveway is approximately 43 feet wide at its entrance, and narrows down to 22 feet wide at its narrowest point, before widening again at the entrance to the parking lot. The site is surrounded on three sides (north, south and west) by Leland cypress trees of varying heights. Per the conditions of approval for the special exception, a row of emerald green arborvitae has been planted between the driveway and the property line. The small, front parking area has been designated for handicapped-accessible parking, with appropriate striping and signage. The remaining open space is planted in grass, with scattered trees throughout the site.

The Petitioner proposed no changes to the exterior of the building at the special exception hearing, although a recent newsletter suggests a plan to dramatically increase the size of the building in the future. The only signage on the property currently is a small identification sign on the front face of the building, next to the front door. Photographs suggest that due to the building setback and heavy landscaping, this sign is not readily visible from the street. Exterior lighting is limited to residential-style fixtures near the front and rear entrances to the building.

The subject property abuts roadways to the south and west. To the east, it abuts a residential lot in the R-200 Zone that is developed with a single-family detached home. At the time of the original hearing in 2006, that home was being expanded into a large, two-story structure. To the north, the subject site abuts property in the R-200 Zone that is encumbered with a forest conservation easement about 50 feet wide, which buffers the subject property from development on the Redland Place cul de sac. Confronting the subject site across Redland Road are townhouses and single-family

detached homes in the PD-5 Zone. Confronting across Needwood Road are single-family residential properties in the RE-2 Zone.

The photograph below depicts the subject property and some of the nearby land uses.

**Aerial View of Subject Property Provided by Technical Staff, from Ex. 25(b)**



***B. The Petitioner and the Use***

The Center is a tax-exempt entity that was created in 1999, when the local Washington, D.C. area chapter of the national Taiwanese American Association became large enough to be an independent organization.

The Petitioner's by-laws describe its corporate purpose as follows:

To enhance the strength of the Taiwanese and Taiwanese-American culture among the members, to promote and facilitate mutual understanding between the Taiwanese culture and other cultures in the United States, to engage in social, cultural, educational, and other related activities, and to establish a center for the conduct of such activities by the members and the public.

Ex. 3(a) at 1. The by-laws further provide that the Center shall operate exclusively for charitable, cultural and educational purposes as a section 501(c)(3) organization.

The Center has hosted educational and cultural events such as a seminar on living wills and trusts, a seminar on the environmental benefits of recycling, a panel discussion on public policy issues related to Taiwan, an annual banquet held at a restaurant and an annual concert of Taiwanese music held at a local high school.

The conditions of approval permit the Center to be open for regular activities from 10:00 a.m. to 3:00 p.m., Monday through Fridays. Regular activities at the Center include small get-togethers, computer use, use of the Taiwanese-oriented library, and preparing specialty foods in the kitchen.

The conditions of approval permit the Center to show weekday movies, one day per week, within stated hours; to host a seminar once each month on a Saturday or Sunday between 1:00 and 5:00 p.m.; and to hold two open house events, one on a Saturday in January between 10:00 a.m. and 2:00 p.m. and the other on a Saturday in August, between 2:00 p.m. and 6:00 p.m. Meetings of the Board of Directors may take place on site during regular hours or on Saturday mornings. The number of people permitted on site is limited as follows:

- a. No more than 20 people on site at one time during any weekday activity.
- b. No more than 30 people on site at any one time during weekend seminar functions.
- c. No more than 60 people on site at any one time during the two open houses.

Parking is limited by the conditions of approval to no more than 16 vehicles on site at one time, plus two vehicles in the handicapped-accessible parking spaces. Parking in the driveway or on neighborhood streets is prohibited at all times.

The limits on attendance were crafted, with input from the Center, with the intention of reconciling the Planning Board and Staff's recommendation of no more than 20 people on site at one time with the reality of the Center's activities as described by Mr. Huang. The limits are also intended to recognize that the Center can be compatible with the neighborhood only if the amount and type of on-site activities are kept at a modest level.

### **III. PRE-HEARING SUBMISSIONS**

#### **A. Applicant**

The Center submitted a letter to the BOA on March 30, 2007 to demonstrate its compliance with Condition 15 of the special exception, requiring the creation of a Community Liaison Council ("CLC"). See Ex. 38. As described in the letter, the Center followed the BOA's direction in establishing the CLC by inviting the owners of the adjacent home to the east and the two homes directly confronting the site across Needwood Road to join. The letter indicates that all three property owners, Juan Rodriguez (next door), William Burroughs and Michael Davidson, agreed to join the CLC.

The March 30, 2007 submission also contained a copy of a newsletter dated April 5, 2007, which was apparently sent to members of the Center. See Ex. 38, second page. It includes a notification, as required in Condition 4, that parking is not permitted along the driveway. It also includes the following item, which the Hearing Examiner raised during the hearing (see Part IV below):

An expansion of the current TCC building is underway. The future building including the current one will have total 16,800 square feet in two stories (8,400 square feet each floor.) Now the Center is accepting your pledge or contribution for the new building project and recognition for huge contribution is under study.

On November 21, 2007, OZAH received a letter from Mr. Huang dated October 31, 2007, constituting the annual report required under Condition 15 of the special exception. See Ex. 41. This letter states that the Center has complied with all conditions of the special exception, including arranging three meetings of the CLC, on May 16, June 18 and November 5, 2007. The letter explains that the May 16 meeting "was excused due to conflicting schedule or emergency situation among the members even the Petitioner's efforts calling members many times by phone." Attached to the

November 21 submission are letters inviting the neighborhood CLC members to the June 18 and November 5 meetings, and minutes from those meetings. The minutes from the June 18, 2007 meeting indicate that it was attended by Mr. Huang, the People's Counsel (Martin Klauber) and Mr. Davidson. See Ex. 41(d). Neither Mr. Burroughs nor Mr. Rodriguez attended. Per the minutes, Mr. Davidson reported that although some people complain about cars in his driveway, he finds there is no problem when he has a party and the Center has a party at the same time. The minutes report that Mr. Huang explained the function of the Center to Mr. Davidson, and that the meeting closed in less than an hour. The minutes from the meeting of November 5, 2007 indicate that it was attended by Mr. Huang, Mr. Klauber and Mr. Rodriguez. See Ex. 41(e). Neither Mr. Burroughs nor Mr. Davidson attended the meeting. Mr. Rodriguez stated that he had recently stopped some teenagers who were trying to enter the Center's parking lots, and suggested that more lighting might be needed. Mr. Huang explained that two front wall lights and a rear light had been replaced with more sensitive motion detectors that turn the lights on for 15 minutes at a time. This meeting also closed in less than an hour.

### **B. Inspection Report**

At the Hearing Examiner's request, the Department of Permitting Services ("DPS") conducted several inspections at the subject site in anticipation of the December 17, 2007 hearing, the results of which are described in a memorandum dated December 11, 2007.<sup>1</sup> See Ex. 42. These consisted of six random drive-by inspections between November 15 and 26, a thorough site inspection on Thursday, November 29 at 11:00 a.m., a meeting with Mr. Huang on Tuesday, December 4 at 12:00 p.m., and an unannounced inspection on Saturday, December 8 at 1:50 p.m., during a weekend seminar function. DPS's report identified the following violations of conditions of this special exception:

<b>Condition</b>	<b>Inspection Findings</b>
1. Petitioner shall be bound by all of its testimony and exhibits of record, including the final Site Plan, Exhibit 30(a), and by any representations made by Petitioner's counsel that are identified in this report or in the Board's Opinion in this matter.	Not in compliance. See details under Condition #2.

<sup>1</sup> The inspection request was made in mid-November, 2007, and the Hearing Examiner is most appreciative of DPS's quick and thorough response.

<p>2. Petitioner must stripe the parking lot at the rear of the site for 16 parking spaces, as shown on the Site Plan. The two spaces shown at the west of the end of the parking lot must be striped diagonally to indicate that no parking is permitted, and each one must be posted with a sign stating "No Parking – Turnaround Area."</p>	<p>Not in compliance. Parking spaces were striped too narrow at 8' wide, not in compliance with site plan specification of 8'5" width. Also, only one "No Parking" sign was posted between the two turnaround areas.</p>
<p>4. Petitioner must inform all members, in writing, that parking in the driveway or on local streets is prohibited at all times. A copy of such notice shall be provided to the Board.</p>	<p>Not in compliance.<sup>2</sup> The Center notified members not to park in the driveway and provided a copy of the notice to the BOA, but did not inform members that parking on local streets is prohibited at all times.</p>
<p>12. Petitioner must maintain an accurate, up-to-date log of all persons visiting the Center, and make this log available to county officials upon request.</p>	<p>Technically in compliance, but the log is not written in English. The Hearing Examiner recommends modifying this condition to require the log to be in English.</p>
<p>13. No more than 16 vehicles may be permitted on site at any one time, plus two handicapped-accessible vehicles in the front parking area. Vehicles parked on site must be limited to automobiles, light trucks or vans.</p>	<p>Not in compliance. During the unannounced inspection on Saturday, December 8, 2007, DPS staff observed 18 vehicles parked in the 16-vehicle rear parking area.</p>
<p>19. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.</p>	<p>Not in compliance. The Center is required to obtain the following permits from DPS:</p> <ul style="list-style-type: none"> <li>(1) A Commercial Change of Use Building Permit for conversion of a single-family residence from residential use to a commercial/assembly use.</li> <li>(2) A Use and Occupancy Certificate</li> </ul> <p>DPS reports that the Change of Use permitting process involves the submission of extensive drawings (architectural, structural, electrical, site, stormwater management, etc.) that may take weeks to prepare, plus a thorough review at DPS that takes 8 to 12 weeks. DPS estimates the entire process could take six months.</p>

<sup>2</sup> DPS found the Petitioner to be in compliance with this condition, based on information provided by Mr. Huang. This was disproved, however, by the newsletter that Mr. Huang submitted as proof of compliance. See Ex. 41(a).



### III. SUMMARY OF HEARING

#### ***A. Taiwan Culture Center***

Tai L. Huang, President of Taiwan Culture Center Inc. and Chairman of its Board of Directors, was the only witness on behalf of the Center. He testified that on December 8, 2007, when DPS recorded 18 cars in the rear parking lot, the Center held a meeting that was attended by about 30 people. Mr. Huang was not on site on December 8 and could not explain why the number of cars in the parking lot exceeded the maximum. He indicated that the person in charge of the event was responsible for regulating the use of the parking lot, and that the Center will take "strict action" on the parking limitation. See Tr. Dec. 17, 2007 at 8.

Mr. Huang testified that after his meeting with DPS on December 4, 2007, two no-parking signs were installed in the rear parking lot, one in each of the turnaround areas. He stated that he believes there is enough space to widen the parking spaces to 8.5 feet, and he will have that taken care of when there is dry weather.

Mr. Huang indicated that he was not previously aware that the Center was required to obtain permits from DPS. His counsel, David Brown, stated that he believed Mr. Huang understood what the Center's obligations were, but was not involved after the special exception was obtained. Mr. Brown stated that he intends to take a more active role in making sure that compliance is done more meticulously in the future. See *id.* at 11.

The Hearing Examiner asked Mr. Huang to explain why the Center's April, 2007 newsletter states that building expansion plans for the subject site are "underway." Mr. Huang stated that the situation is not described accurately in the newsletter because there is no design or anything. He added that people think the building is not big enough because they would like to have space for activities like aerobics, T'ai Chi or Yoga. When asked whether the Center plans to expand the building, Mr. Huang stated "Sometime in the future. . . . I don't know when because it involves a lot of money and effort." *Id.* at 13. The Hearing Examiner explained to Mr. Huang that the Center cannot expand the building or even get a building permit without advance approval from the BOA. The Hearing Examiner

added that the BOA would not necessarily grant a modification to permit a larger building, considering that an expansion from about 1,000 square feet to 17,000 square feet suggests an intention to significantly increase the level of activity on site and the number of people and vehicles involved. The Hearing Examiner suggested to Mr. Huang that the Center should think carefully about its long-term plans and its future at this site before going through the expense of obtaining the necessary permits.

### ***B. Community Opposition***

Neighboring homeowner Cecelia English, who lives four houses away from the subject site on Needwood Road, began her testimony by stating her affection for Taiwan, which she has visited, and for the Taiwanese people. She described her neighborhood as very multi-cultural and priding itself on how well people get along. Ms. English stated that the neighborhood is very concerned right now about special exceptions and enforcement of conditions because of a pending application for a landscaping business that wants to operate across the street from her house. She stated that people are very concerned about someone getting a special exception and then ignoring the conditions and doing whatever they want.

Ms. English stated that she was speaking informally for about half a dozen families in the neighborhood who find that the number of cars parked in connection with the Center is “very much in contrast” to what was stipulated in the conditions. See *id.* at 17. Ms. English provided photographs that were taken on August 25, 2007, the date of the Center’s last open house. The photos, reproduced on the next two pages, show numerous cars parked along the driveway of the subject site, in the rear part of the site but not in marked parking spaces, and on a local street, Carnegie Way.

Ms. English noted that the photographs show at least a dozen cars parking along Carnegie Way, a few blocks from the subject site. She testified that there has been a pattern of parked cars “all over the place” on Saturdays when the Center is having a seminar, and she has seen people walking from their cars to the Center. Ms. English noted that some people park at a property farther down Needwood Road that is owned by the Taiwan Church, and then walk to the Center.

**Photographs of On-Site Parking for Open House, August 25, 2007, from Ex. 43.**



**Photograph of Parking for Open House on Carnegie Way, from Ex. 43**

Community member Pat Labuda, who lives about half a mile from the subject site, voiced concerns on behalf of the Shady Grove Civic Alliance. See *id.* at 30. She indicated that people are not pleased about folks parking on the property of the Taiwan Church and walking to the Center, because they park all over the lawn. She indicated that people in the neighborhood are very concerned about zoning enforcement, especially in light of the increased density envisioned for their area in the Shady Grove Master Plan.

The record also contains two letters from Needwood Road resident Carol L. Kosary, who reports that there were five cars parked at the Center at 9:30 a.m. on December 17, 2008, while the follow-up hearing was taking place, and over 30 at 11:30 a.m. on the same day, as well as cars parked off-site for an activity at the Center on Monday, January 8, 2008. See Exs. 44 and 45. The Hearing Examiner places no weight on these letters because they were submitted after the hearing and, therefore, the Applicant did not have an opportunity to respond.

### ***C. Petitioner's Rebuttal***

Mr. Huang acknowledged that during the August, 2007 open house there were too many cars to fit on the site. The Center directed people to park on Carnegie Way to keep the cars out of the way of traffic on Needwood Road. He stated that he does not believe people are parking on the street at other times because if they need somewhere else to park, they can park at a nearby property owned by the Taiwan Church (the property currently has a residential dwelling on it; a church has not yet been built). Later in the hearing, Mr. Huang stated that people park at the Taiwan Church only for the open house. It is not completely clear from the transcript whether Mr. Huang changed his testimony to conform to a statement made by his counsel, or whether the earlier statement was misunderstood due to language barriers. See Tr. at 23, 33.

The Hearing Examiner reminded Mr. Huang of his testimony at the original hearing that the Center would limit the number of cars by encouraging car-pooling and sending out timed tickets to the open house, not by telling people to park off-site. He did not offer a direct response.

### ***D. People's Counsel***

The People's Counsel for Montgomery County, Martin Klauber, recommended that the Center be required to submit a detailed transportation management plan, which would address where overflow parking is to occur, appoint a transportation management coordinator to be on site for all events, and establish an enforcement mechanism to ensure that members will stick with the plan. See *id.* at 27-28. He also recommended that the CLC be expanded to include Ms. English and anyone else who wishes to be on it.

## **IV. CONCLUSIONS**

The evidence presented at in and in connection with the December 17, 2007 follow-up hearing suggests strongly that the Center is not able to function within the parameters established by the conditions of the special exception. DPS observed 18 cars parked in the rear parking lot during a weekend seminar, and evidence that is both ample and undisputed establishes that during the Center's

August, 2007 open house there were many more cars on the site than are permitted, plus a large number of cars parked off site to attend the open house, some on the property of the future Taiwan Church and some on Carnegie Way. This confirms the Hearing Examiner's concern, during the original special exception hearing, that Mr. Huang was being less than fully truthful when he stated that the Center would limit the number of cars on the site to 20, even during an open house, and would prohibit its members from parking on the local streets. The Center's one apparent effort to prevent visitors from parking in the driveway was a line in a newsletter, and that minor effort did not even mention that street parking is prohibited. Moreover, the Center has made no effort to comply with permitting requirements identified by DPS. This body of evidence would lend support to a decision to revoke the special exception. The Hearing Examiner is reluctant to recommend that decision at this juncture, however, given that only one unannounced weekend inspection has taken place, and that the evidence about whether those attending events other than the open house park at the Taiwan Church property is conflicting. For these reasons, the Hearing Examiner recommends a period of close monitoring before a decision is made on a revocation.

DPS's December, 2007 memorandum recommended giving the Center until May 1, 2008 to come into compliance with all the conditions of the special exception, including the permit requirements. If compliance is not attained by May 1, 2008, DPS intends to recommend a show cause hearing. See Ex. 42 at 2. In light of the time that has elapsed since then and the additional time necessary for BOA action, the Hearing Examiner feels that fairness suggests a compliance deadline of June 15, 2008. If, at that time, the evidence shows a continued failure to comply with the conditions of the special exception, the Hearing Examiner recommends revocation.

To build a more complete record of compliance with the limits on the number of people and vehicles on site, the Hearing Examiner recommends that the BOA ask DPS (1) to obtain the Center's schedule of events from Mr. Huang and conduct unannounced inspections at a minimum of three events by June 15, 2008; and (2) to prepare a memorandum to the BOA no later than June 20, 2008, detailing the Center's level of compliance with the conditions of the special exception, including

the permitting requirements, and recommending a show cause hearing if unresolved violations so warrant.

The Hearing Examiner further recommends that the BOA modify the conditions of the subject special exception at this time, as set forth in Part VI below. These modifications respond to evidence submitted at and in connection with the December 17, 2007 hearing. The requirement for a transportation management plan, in particular, responds to the clear evidence that Mr. Huang's original "plan" to reduce parking demands by issuing timed tickets to the open house events was either a complete fabrication or a wholly unrealistic notion that the Center is unable or unwilling to carry out. The presentation of a realistic plan would allow the BOA to assess the actual impact of the Center on the neighborhood and make a reasoned decision as to whether the Center should be permitted to continue operating at this site.

## **V. RECOMMENDATIONS**

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Special Exception No. S-2668 be modified as follows:

(1) Condition 12 shall read as follows:

12. Petitioner must maintain an accurate, up-to-date log of all persons visiting the Center, written in the English language, and make this log available to county officials upon request.

(2) Condition 15 shall be modified to change "three to four representatives of the local community" in the first sentence to "three to six representatives of the local community." Condition 15 shall be further modified to delete the fourth sentence, reading "If more than four community members desire to sit on the Community Liaison Council, the Petitioner may, at its discretion, allow additional community representatives" and replace it with the following:

"Invitations to sit on the Community Liaison Council must be extended to three other residents of the immediate area, in addition to the owners of the adjacent home to the east and the two homes directly confronting the subject site. These invitations should include anyone who has expressed an interest in the operation of the Center by participating in the special exception proceedings. If any of those individuals declines to participate, the Center must send an invitation to another area resident instead."

(3) Condition 20 shall be added as follows:

20. The Center must submit to the BOA, within three days of filing or receipt, a copy of all permit applications filed in compliance with Condition 19 and all correspondence or permits received in connection with such applications.

(4) Condition 21 shall be added as follows:

21. The Center must submit a proposed transportation management plan within 60 days of the BOA's action in response to the Hearing Examiner's Supplemental Report and Recommendation dated January 31, 2008. The transportation management plan must describe in detail how the Center plans to enforce the limitation of 16 cars on site at one time, including what enforcement measures the Center will take to punish violations of that limit, e.g. prohibiting a member who parks outside one of the marked spaces from attending any events for a certain period of time. The transportation management plan must also appoint a Transportation Management Coordinator to oversee parking enforcement at all events, and must propose a workable plan for overflow parking at the twice-yearly open houses that will not impose objectionable adverse effects on the neighborhood. It may also address any other transportation issues the Center considers relevant.

I further recommend that the Board of Appeals ask DPS (1) to obtain the Center's schedule of events from Mr. Huang and conduct unannounced inspections at a minimum of three events by June 15, 2008; and (2) to prepare a memorandum to the BOA no later than June 20, 2008, detailing the Center's level of compliance with the conditions of the special exception, including the permitting requirements, and recommending a show cause hearing if unresolved violations so warrant.

Dated: January 31, 2008

Respectfully submitted,

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Françoise M. Carrier  
Hearing Examiner